

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1620 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

NOORMAHMAD @ NURU USMANBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner.

MR.HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 20-12-97 passed by the Police Commissioner, Ahmedabad City under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of his detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on six criminal cases filed against the petitioner for the alleged offences punishable under Sections 254, 379, 380 and 447 of the IPC . Five out of these cases are pending trial in the competent Court while one case is under investigation. Over and above these two criminal cases, the detaining authority has also placed reliance on the statements of four witnesses in connection with the incidents of 15-11-1997 and 23-11-1997 when the petitioner is alleged to have approached them with stolen articles of electric motor and HMT watch for keeping them as security and demanded money and on being refused to do so by the witnesses, they were betan on public road with the result many people gathered; the petitioner rushed towards them with open knife with the result the crowd started running helter-skelter and an atmosphere of fear and terror was created and the even tempo of life was disturbed. Considering this material, the detaining authority recorded the satisfaciton that the petitioner is a dangerous person within the meaning of Section 2 (c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against him, which has been challenged by the petitioner by way of this petition.

I agree with the submission of Ms Kachhavah that even if the involvement of the petitioner in the criminal cases and the incidents is believed, the same at best can be treated as breach of law and order and not breach of public order since the inciedents are against individuals and the public at all was not at all concerned. I have gone through ther statements of the witnesses and reading the same it is clear without any manner of doubt that the allegations made therein are quite general and vague in nature and even if the allegations made against the petitioner are accepted as true on their face value, the same, under no circumstances, can be treated as breach of public order. Thus the subjective satisfaction reached by the detaining authority to brand the petitioner as a dangerous person is not genuine and therefore the detention of the detenu illegal.

In the result, this petition is allowed. The order or detention dated 20-12-1997 is quashed and set aside. The detenu Noormahmod @ Nuru Usmanbhai Shaikh is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute to the aforesaid extent with no order as to costs.

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